

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

**SALVATORE BONACCORSO**

**Plaintiff,**

**v.**

**24 HOUR FITNESS USA, INC.**

**Defendant.**

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**CIVIL ACTION NO.** \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant 24 Hour Fitness USA, Inc. (“24 Hour Fitness”) hereby removes Cause No. 17-CV-0098, *Salvatore Bonaccorso v. 24 Hour Fitness USA, Inc.* from the 405th Judicial District Court of Galveston County, Texas, pursuant to 28 U.S.C. §§ 1441 and 1332. Removal of this action is proper because the parties are completely diverse and the amount in controversy exceeds \$75,000.00. In support of this Notice, 24 Hour Fitness respectfully states the following:

**I. STATE COURT PROCEEDINGS**

1. On January 25, 2017, Plaintiff Salvatore Bonaccorso (“Bonaccorso” or “Plaintiff”) commenced a civil action against 24 Hour Fitness in the 405th Judicial District Court of Galveston County, Texas, styled *Salvatore Bonaccorso v. 24 Hour Fitness USA, Inc.*, Cause No. 17-CV-0098 (the “State Court Action”).<sup>1</sup> In his petition, Plaintiff alleges 24 Hour Fitness violated §§ 17.50(a)(3) and 17.50(b)(1) of the TEX. BUS. & COM. CODE.<sup>2</sup>

2. Plaintiff served 24 Hour Fitness with a copy of his Original Petition on January 31, 2017.<sup>3</sup> 24 Hour Fitness has not filed an answer in the State Court Action.<sup>4</sup>

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<sup>1</sup> See Plaintiff’s Original Petition at 1, Exhibit A-1, attached hereto.

<sup>2</sup> See *id.* at 4–5.

<sup>3</sup> See Service of Original Petition, Exhibit B, attached hereto.

<sup>4</sup> 24 Hour Fitness’s response in the State Court Action is due on February 27, 2017. See TEX. R. CIV. P. 99.

3. The State Court Action is currently pending before the 405th Judicial District Court of Galveston County, Texas with a Status Conference set for April 20, 2017.<sup>5</sup>

4. 24 Hour Fitness now timely files this Notice of Removal, because there is complete diversity of citizenship between the parties, and Plaintiff's alleged damages exceed \$75,000.00.<sup>6</sup>

5. As required by 28 U.S.C. § 1446(a) and Local Rule 81, the following documents are attached hereto: (a) all executed process in the case;<sup>7</sup> (b) pleadings asserting causes of action and all answers to such pleadings;<sup>8</sup> (c) all orders signed by the state judge;<sup>9</sup> (d) the docket sheet;<sup>10</sup> (e) an index of matters being filed;<sup>11</sup> and (f) a list of all counsel of record, including addresses, telephone numbers and parties represented.<sup>12</sup>

## **II. REMOVAL IS TIMELY**

6. Plaintiff initially filed his Original Petition on January 25, 2017.<sup>13</sup> 24 Hour Fitness was served with Plaintiff's Original Petition on January 31, 2017.<sup>14</sup> This Notice of Removal is filed within thirty days of service; therefore, removal is timely.<sup>15</sup>

## **III. VENUE**

7. Venue for removal is proper in this district and division because this district and division embrace the 405th Judicial District Court of Galveston County, Texas, the forum in which the State Court Action is pending.<sup>16</sup>

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<sup>5</sup> See Plaintiff's Original Petition at 1, Exhibit A-1.

<sup>6</sup> See 28 U.S.C. § 1332.

<sup>7</sup> See Exhibits A-B.

<sup>8</sup> See Plaintiff's Original Petition, Exhibit A-1.

<sup>9</sup> No orders have been entered in this matter.

<sup>10</sup> See Docket Sheet, Exhibit A.

<sup>11</sup> See Index of Matters Filed, Exhibit C, attached hereto.

<sup>12</sup> See List of All Counsel of Record, Exhibit D, attached hereto.

<sup>13</sup> See Plaintiff's Original Petition at 1, Exhibit A-1.

<sup>14</sup> See Service of Original Petition, Exhibit B.

<sup>15</sup> See 28 U.S.C. § 1446(b)(1).

<sup>16</sup> See 28 U.S.C. § 1441(a).

#### **IV. GROUNDS FOR REMOVAL**

8. Removal is proper because this Court has subject matter jurisdiction under 28 U.S.C. § 1332. The parties are completely diverse and the amount in controversy exceeds \$75,000.00.

##### **A. BONACCORSO IS A CITIZEN OF TEXAS.**

9. Plaintiff's Original Petition alleges that Plaintiff is a resident of League City, Texas.<sup>17</sup> Therefore, Plaintiff is a Texas resident for diversity purposes.

##### **B. 24 HOUR FITNESS IS A CITIZEN OF CALIFORNIA.**

10. 24 Hour Fitness is a California corporation, with its principal place of business or "nerve center" in San Ramon, California.<sup>18</sup> Therefore, 24 Hour Fitness is a resident of California for diversity purposes.

##### **C. AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00.**

11. Plaintiff is seeking an award of monetary damages in an amount greater than \$200,000.00 but no more than \$1,000,000.00.<sup>19</sup> Therefore, it is apparent from the face of the Plaintiff's Original Petition that the amount in controversy is in excess of \$75,000.00.

#### **V. NOTICE TO STATE COURT AND OPPOSING PARTY**

12. Pursuant to 28 U.S.C. § 1446(d), 24 Hour Fitness will promptly give Plaintiff written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 405th Judicial District Court of Galveston County, Texas, where the action is pending.

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<sup>17</sup> See Plaintiff's Original Petition at 1, Exhibit A-1.

<sup>18</sup> See *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (adopting the nerve center test).

<sup>19</sup> See Plaintiff's Original Petition at 1, Exhibit A-1.

**VI. CONCLUSION**

13. 24 Hour Fitness prays that the above described case be removed from the 405th Judicial District Court of Galveston County, Texas, to the United States District Court for the Southern District of Texas.

Respectfully submitted,

REED SMITH, LLP



By: \_\_\_\_\_

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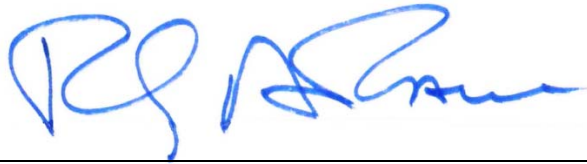
ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument was served via ECF and/or certified mail, return receipt requested on the following counsel of record on this 24th day of February, 2017:

DANIEL KISTLER  
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ATTORNEY FOR PLAINTIFF



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Ricky A. Raven